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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,757	03/12/2002	Katsuyuki Kaneko	36427-178647	2759
7590	03/09/2004		EXAMINER MANLOVE, SHALIE A	
Venable Post Office Box 34385 Washington, DC 20043-9998			ART UNIT 1755	PAPER NUMBER

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,757

Applicant(s)

KANEKO ET AL.

Examiner

Shalie A. Manlove

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 1755

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is rendered indefinite because it is unclear as to whether or not the C₇₋₉ aryl alkyl group is an aryl ring with a one to three carbon substituent or an aryl ring with a seven to nine carbon substituent

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

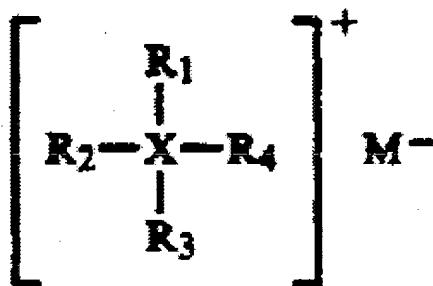
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 4-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogusu et al., U.S. 5,202,114.

As to claims 1 and 10, Ogusu teaches a gel composition or nail polish that comprises at least one cationic surfactant wherein the cationic surfactant is a quarternary ammonium salt represented by the following general formula:

Art Unit: 1755



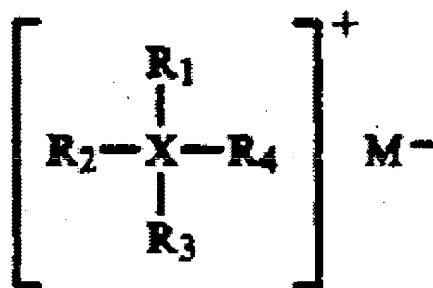
The reference also teaches that R^1 and R^2 can be an alkyl group having 10-22 carbon atoms and R^3 and R^4 can be an alkyl group having 1 to 3 carbon atoms (abstract, column 3, lines 6-47).

The quarternary ammonium cation salt of the Ogusu reference reads on the claimed formulas I and II of the instant application. Additionally, the reference teaches that one of the R substituents can be a benzyl group as per claim 4 (column 3, lines 21-32). Ogusu also teaches that one of the R substituents can be a methyl group as per claim 5 (column 3, lines 6-32). A C_{16-18} alkyl group substituent is taught by the Ogusu reference in column 3, lines 6, 31 as per claims 6-7. As to claims 8-9, the Ogusu reference teaches a synthetic smectite such as montmorillonite or hectorite is used as clay (column 3, lines 6-19).

5. Claims 1 and 4-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuritzkes al US 3,422,185.

As to claim 1, and 10, Kuritzkes teaches nail enamel that comprises at least one cationic surfactant wherein the cationic surfactant is a quarternary ammonium salt represented by the following general formula:

Art Unit: 1755



The reference also teaches that R^1 is an alkyl group having 10-24 carbon atoms and R^2 is hydrogen, benzyl, alkyl group having 10-24 carbon atoms and R^3 and R^4 are hydrogen or an alkyl group having 1 to 4 carbon atoms (col. 4, lines 26-45). The quarternary ammonium cation salt of Kuritzkes reads on the claimed formulas I and II of the application. Additionally, the reference teaches that one of the R substituents can be a benzyl group as per claim 4 (column 4, lines 37-38). The reference also teaches that one of the R substituents can be a methyl group as per claim 5 (column 4, line 43). A C_{16-18} alkyl group substituent is taught by the reference in column 4, lines 35-37 as per claims 6-7. As to claims 8-9, Kurizkes teaches a synthetic smectite such as montmorillonite is used as clay (column 4, lines 67-68).

Allowable Subject Matter

6. Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is an examiner's statement of reasons for allowance: The prior art fails to teach the claimed gel composition comprising a clay mineral containing quaternary ammonium

Art Unit: 1755

cations of formula I and II respectively deemed as A and B wherein the weight ratio of A:B is from 55:45 TO 99.9:0.1 and from 60:40 to 80:20.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shalie A. Manlove whose telephone number is (571) 272-1372. The examiner can normally be reached on M-F 8:00- 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on (571) 272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shalie A. Manlove
Examiner
Art Unit 1755

March 1, 2004


C. MELISSA KOSLOW
PRIMARY EXAMINER